

Internal Revenue Service
District Director

Department of the Treasury

Post Office Box 1680, GPO
Brooklyn, NY 11202

Date: JAN 13 1994

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED], under the not-for-profit corporation law in the [REDACTED].

The purpose for which the corporation was formed are to "provide expertise necessary to allow schools at the primary, secondary, college and university level to educational reforms and research with effective use of technology. To provide the know how for the appropriate application of technology in educational settings. To enhance the teaching, learning and management process. To assist education organizations with the development of specific strategies and action plans designed to address both technology and its users. To develop programs in technology planning, educational research, and professional development. To be employed by private schools, public school systems, education consortiums and institutions of higher education and other educational organizations nationwide. To monitor current research and development on educational improvement. To assist educators in harnessing the power of technology to align local curricula with emerging national curriculum standards and to manage the instructional process. To provide research focusing on the development of innovative practices to support a variety of restructuring initiatives, alternative assessment procedures and program evaluations for public schools at all levels. To develop curriculum plans and pilot projects to enhance the teaching, learning, and management in schools, districts and universities."

The information submitted with your application 1023 indicates that the organization is a successor to a for-profit entity. The President/Director of the newly organized non-profit was the sole proprietor of the predecessor for profit entity.

Your primary activity is providing consulting services to school systems, public school systems, educational consortiums and institutions of higher education regarding "research, planning and implementation activities that link educational reform with the effective use of technology." This organization is a "client and end-user-driven organization." The research projects are determined based on inquiries and requests received by the organization. The research is managed by the program director. Your staff "trains teachers and assists educational organizations with the development of specific strategies and action plans designed to address both technology and its users." This organization "and its clients' primary mission is two-fold. One is to aid schools that are attempting to integrate educational reforms. The second is to research the effectiveness of new technology and develop ways to use this technology as an educational tool." This will greatly enhance the teaching, learning and management processes. "The staff trains teachers and assists educational organizations with development of specific strategies and action plans designed to address both technology and its users. In addition, this organization provides "services which include conducting planning studies, developing and analyzing bid specifications, performing technology applications audits, planning school and campus facilities, designing networks and demonstrating new emerging technologies." Your major source of financial support is from your consulting contracts. These contracts are based on a per diem or hourly rate based upon the level of expertise required plus 10% charge for indirect costs and overhead.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Better Business Bureau v. U.S., 325 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(d)(3) of the Regulations provides, in part, that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community. Museums and schools are included in the examples of educational organizations which, if they otherwise meet the requirements of section 501(c)(3) of the Code, may qualify under this section.

In Revenue Ruling 72-369, 1972-2 Integrate. 245 it was held that an organization formed to provide managerial and consulting services for unrelated tax-exempt organizations for the purpose of improving administration of their charitable programs did not qualify as a Code Section 501(c)(3) organization. The furnishing of services at cost fell short of the donative element necessary to classify the activities as charitable.

In B.S.W. Group, Inc., 70 TC 352, Dec. 35, 1975 it was held that an organization that planned on offering consulting services for a fee to nonprofit, limited resource organizations engaged in various rural-related activities was not entitled to tax-exempt status because it did not operate exclusively for charitable, educational or scientific purposes. In addition, the court determined that the taxpayer had completely failed to show that its own services, or the services performed by its consultants, would not be in competition with commercial businesses such as personnel agencies, consulting referral services, real estate agents, housing rental services, banks, loan companies, trash disposal firms or environmental consulting companies.

Like the organizations described above, your organization provides consulting services on a regular basis. A fee which constitutes a trade or business ordinarily carried on for profit. The fact that the services are provided at a lower rate than other similar consulting and management organizations and solely for non-profit and tax exempt educational organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

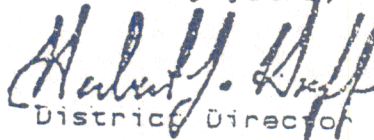
If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,


District Director

Enclosure: Publication 892